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6 ADMINISTRATIVE CORPORATION and BOARD OF
TRUSTEES FOR THE CARPENTERS SOUTHWEST TRUSTS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11 CARPENTERS SOUTHWEST
12 ADMINISTRATIVE CORPORATION,
13 a California non-profit corporation; and
14 BOARD OF TRUSTEES FOR THE
15 CARPENTERS SOUTHWEST TRUSTS,
16 Plaintiffs,
17 v.
18 CONSTRUCTION TECHNOLOGY
19 SPECIALISTS, INC., a New Mexico
corporation; and DOES 1 through 10,
inclusive,
Defendants.
CASE NO.
COMPLAINT FOR:
1. DAMAGES FOR FAILURE
TO PAY FRINGE BENEFIT
CONTRIBUTIONS;
2. SPECIFIC PERFORMANCE
FOR SPECIFIC MISSING
REPORTS; and
3. SPECIFIC PERFORMANCE
TO CONDUCT AN AUDIT

JURISDICTION

21 1. This is a civil action to recover fringe benefit contributions, for specific
22 performance for specific missing reports, and for specific performance to conduct an
23 audit. This action arises and jurisdiction of the court is founded as to Section 301 of
24 the Labor-Management Relations Act of 1947, as amended ("LMRA"), 29 U.S.C. §
25 185a, and Sections 502 and 515 of the Employee Retirement Income Security Act of
26 1974, as amended ("ERISA"), 29 U.S.C. § 1132 and 1145.

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PARTIES AND OTHERS

2. CARPENTERS SOUTHWEST ADMINISTRATIVE

CORPORATION, a California non-profit corporation ("CSAC") is a non-profit corporation duly organized and existing under and by virtue of the laws of the State of California. CSAC's principal place of business is in the County of Los Angeles, State of California.

3. At all relevant times herein, the BOARD OF TRUSTEES FOR THE CARPENTERS SOUTHWEST TRUSTS were and now are fiduciaries and are duly authorized and acting trustees of those ERISA Trust Funds defined in paragraph six.

4. CSAC and BOARD OF TRUSTEES FOR THE CARPENTERS SOUTHWEST TRUSTS are also authorized agents to act on behalf of the remaining Funds and entities (defined in paragraph nine) with respect to these delinquencies. CSAC and BOARD OF TRUSTEES FOR THE CARPENTERS SOUTHWEST TRUSTS are sometimes collectively referred to as PLAINTIFFS.

5. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants named herein as DOES 1 through 10, are unknown at this time to PLAINTIFFS. PLAINTIFFS therefore sue the defendants by such fictitious names, and PLAINTIFFS will amend this complaint to show their true names and capacities when the same has been ascertained. PLAINTIFFS are informed and believe and thereon allege that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, either through its own conduct, or through the conduct of its agents, servants and/or employees, or in some other manner as yet unknown, and that PLAINTIFFS' damages as herein alleged were proximately caused by those defendants

6. At all relevant times Southwest Carpenters Health and Welfare Trust, Southwest Carpenters Pension Trust, Southwest Carpenters Vacation Trust, and Southwest Carpenters Training Fund, were and are express trusts which exist pursuant to Section 302 of the LMRA, 29 U.S.C. §186, and are multiemployer plans

1 within the meaning of section 3 of ERISA, 29 U.S.C. §1002.

2 7. At all relevant times the Construction Industry Advancement Fund of
3 Southern California, the Residential Housing Contract Administration Trust Fund,
4 the Contractors-Carpenters Grievance and Arbitration Trust, and the Contract
5 Administration Trust for Carpenter-Management Relations, were and are express
6 trusts which exist pursuant to section 302 of the LMRA, 29 U.S.C. §186.

7 8. At all relevant times the Carpenters-Contractors Cooperation
8 Committee ("CCCC"), was and is a non-profit California corporation which exists
9 pursuant to section 5(b) of the Labor Management Cooperation Act of 1978, 92
10 Stat. 2020 (1978), for the purposes set forth in section 302(c)(9) of LMRA, 29
11 U.S.C. § 186(c)(9).

12 9. CSAC is the administrator of Southwest Carpenters Health and Welfare
13 Trust, Southwest Carpenters Pension Trust, Southwest Carpenters Vacation Trust,
14 and Southwest Carpenters Training Fund, and assignee of the Construction Industry
15 Advancement Fund of Southern California, the Residential Housing Contract
16 Administration Trust Fund, the Contractors-Carpenters Grievance and Arbitration
17 Trust, the Contract Administration Trust for Carpenter-Management Relations, and
18 the Carpenters-Contractors Cooperation Committee, and the Grievance Obligation
19 Trust Fund (collectively, the "PLANS"), and as such is a plan fiduciary within the
20 meaning of Section 3 of ERISA, 29 U.S.C. §1002.

21 10. PLAINTIFFS have also been authorized to handle collection of the
22 amounts owed to the New Mexico Retirement Trust Fund ("New Mexico Fund")
23 which exists pursuant to section 302 of the LMRA, 29 U.S.C. §186, and is a
24 multiemployer plan within the meaning of section 3 of ERISA, 29 U.S.C. §1002.
25 (The New Mexico Fund is also included in the term "PLANS").

26 11. The duly authorized and acting trustees or directors of each of the
27 PLANS have also assigned to CSAC all their right, title and interest in and to any
28 and all amounts due and owing to the respective PLANS by the employer as herein

1 alleged.

2 12. Southwest Regional Council of Carpenters and its affiliated local
3 unions ("UNIONS") affiliated with United Brotherhood of Carpenters and Joiners
4 of America are labor organizations that are a party to the collective bargaining
5 agreements involved.

6 13. At all relevant times, employer, CONSTRUCTION TECHNOLOGY
7 SPECIALISTS, INC., a New Mexico corporation, and DOES 1 through 10
8 ("EMPLOYER"), was and is a contractor engaged in the construction industry
9 within the jurisdiction of the UNIONS.

10

11 **FIRST CLAIM FOR RELIEF FOR**
12 **DAMAGES FOR FAILURE TO PAY**
13 **FRINGE BENEFIT CONTRIBUTIONS**

14 14. On or about the date set forth thereon, EMPLOYER made, executed
15 and delivered to the UNION, a Carpenters Memorandum Agreement, Single Project
16 Agreement dated July 31, 2015 ("MEMORANDUM AGREEMENT"). A true and
17 correct copy is attached hereto, marked as Exhibit "1" and incorporated herein by
18 reference.

19 15. The MEMORANDUM AGREEMENT binds EMPLOYER to the terms
20 and conditions of the Labor Agreement between New Mexico Building Branch,
21 Associated General Contractors and the Southwest Regional Council of Carpenters
22 and its affiliated Local Unions of the United Brotherhood of Carpenters and Joiners
23 of America, DATED June 1, 2014 through May 31, 2017, and any extensions,
24 renewals or subsequent Master Labor Agreements, and the PLANS' agreements and
25 any amendments, modifications, extensions, supplementations or renewals of the
26 PLANS' agreements ("collectively referred to as "AGREEMENTS"). The PLANS
27 are third party beneficiaries of the NEW MEXICO BUILDING BRANCH
28 ASSOCIATED GENERAL CONTRACTORS and Master Labor Agreements. The

1 PLANS are third party beneficiaries of the AGREEMENTS and Master Labor
2 Agreements.

3 15. The AGREEMENTS require EMPLOYER to pay fringe benefit
4 contributions at the rates set forth therein for every hour worked by employees
5 performing services covered by the AGREEMENTS, and on account of all
6 compensation paid to employees performing services covered by the
7 AGREEMENTS.

8 16. The AGREEMENTS require EMPLOYER to make the fringe benefit
9 contributions by way of Employer Monthly Reports (“REPORTS”) to the PLANS at
10 their place of business in Los Angeles, California, on or before the 25th day of each
11 month following the month during which the hours for which contributions are due
12 were worked or paid. Further, the AGREEMENTS specifically provide that the
13 venue of an action to recover delinquent fringe benefit contributions shall be in the
14 County of Los Angeles.

15 17. In acknowledging both that the regular and prompt payment of
16 employer contributions is essential to the maintenance of the PLANS, and the
17 extreme difficulty, if not impracticability, of fixing the actual expense and damage
18 to the PLANS when such monthly contributions are not paid when due, the
19 AGREEMENTS provide that the amount of contractual damages to the PLANS
20 resulting from a failure to pay contributions when due shall be presumed to be the
21 sum of \$30.00 per delinquency or 10 percent of the amount of the contributions due,
22 whichever is greater. This amount shall become due and payable to CSAC as
23 liquidated damages in addition to the unpaid contributions or contributions paid
24 late.

25 18. EMPLOYER engaged workers who performed services covered by the
26 AGREEMENTS and who performed labor on works of construction within the
27 jurisdiction of the AGREEMENTS undertaken by EMPLOYER during the term of
28 the AGREEMENTS.

1 19. EMPLOYER has failed to pay the fringe benefit contributions in the
2 manner prescribed by the AGREEMENTS, and there is now due and owing to the
3 PLANS from EMPLOYER in the amounts set forth in Exhibit "2".

4 20. The AGREEMENTS require EMPLOYER to pay for the expense of
5 auditing EMPLOYER's business records if an audit by the PLANS indicates that
6 EMPLOYER failed to report and pay all contributions.

7 21. As a result of the failure to pay fringe benefit contributions in the
8 manner prescribed by the AGREEMENTS, EMPLOYER is liable for interest on the
9 unpaid contributions from the first of the month following the date due, at the rate
10 prescribed by the AGREEMENTS.

11 22. The PLANS have conducted check stub audits, which indicate that
12 EMPLOYER failed to report and pay all contributions owed during this time period.
13 True and correct copies of the Audit Invoices and audit Reports (social security
14 numbers redacted), dated January 24, 2017 and February 7, 2017 are attached as
15 Exhibit "3."

16 23. As a result of the failure to pay fringe benefit contributions in the
17 manner prescribed by the AGREEMENTS, EMPLOYER is liable for an amount
18 equal to the greater of interest on the unpaid contributions as prescribed by section
19 6621 of the Internal Revenue Code of 1954, 26 U.S.C. §6621, or liquidated
20 damages provided for under the AGREEMENTS.

21 24. It has been necessary for PLAINTIFFS to engage counsel to bring this
22 action to compel compliance with the AGREEMENTS, and to recover the attorneys'
23 fees and the costs for which EMPLOYER is liable pursuant to the AGREEMENTS
24 and section 502(g)(2) of ERISA, 29 U.S.C. §1132(g)(2).

25 25. The PLANS have complied with all conditions precedent.

26 26. EMPLOYER is delinquent in contributions in a further sum, the exact
27 amount of which is unknown to PLAINTIFFS, and PLAINTIFFS will move to
28 amend this complaint when the true amount of the fringe benefit contribution

1 delinquency is determined.

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3 **SECOND CLAIM FOR RELIEF FOR**
4 **SPECIFIC PERFORMANCE FOR SPECIFIC MISSING REPORTS**

5 27. PLAINTIFFS reallege and incorporate herein by reference each and
6 every allegation contained in paragraphs 1 through 25 of their First Claim for
7 Relief, and allege for a Second Claim for Relief for Specific Performance for
8 Missing Reports against EMPLOYER, as follows:

9 28. This action for specific performance arises and jurisdiction of the court
10 is founded on Section 301 of the Labor-Management Relations Act of 1947
11 ("LMRA") (29 U.S.C. §185A) and Section 502 of the Employee Retirement Income
12 Security Act of 1974 ("ERISA"), as amended (29 U.S.C.A §1132).

13 29. The AGREEMENTS require EMPLOYER to complete and submit
14 Employers Monthly Reports ("REPORTS") stating the amount of contributions
15 owed along with fringe benefit contribution to the PLANS at their place of business
16 in Los Angeles, California, on or before the 25th day of each month following the
17 month during which the hours for which contributions are due were worked or paid
18 for.

19 30. EMPLOYER has failed to submit REPORTS and contributions for the
20 following months of August 2015 and September 2015.

21 31. The PLANS have no adequate or speedy remedy at law, as the PLANS
22 are unable to calculate the amount owing.

23

24 **THIRD CLAIM FOR RELIEF FOR**
25 **SPECIFIC PERFORMANCE TO CONDUCT AN AUDIT**

26 32. PLAINTIFFS reallege and incorporate herein by reference each and
27 every allegation contained in paragraphs 1 through 31 of its First and Second
28 Claims for Relief and allege for a Third Claim for Relief for Specific Performance

1 to Conduct an Audit against EMPLOYER and DOES 1 through 10, as follows:

2 33. The AGREEMENTS provide that the PLANS have the specific
3 authority to examine the EMPLOYER's job cost records, general check registers
4 and check stubs, bank statements and cancelled checks, general ledgers, cash
5 disbursements ledgers, worker compensation insurance reports, financial statements,
6 corporate income tax returns, employee time cards, payroll journals, individual
7 earnings records of all employees, forms W-2, 1099 and 1096 remitted to the U.S.
8 Government, quarterly state tax returns, health and welfare and pension reports for
9 all other trades, cash receipts' journal, copies of all contracts and all material
10 invoices.

11 34. The PLANS have requested access to EMPLOYER's business records
12 for the purpose of conducting an audit.

13 35. EMPLOYER has failed and/or refuses to allow the PLANS to complete
14 such an audit.

15 36. The PLANS have no adequate or speedy remedy at law.

16 37. It has been necessary for PLAINTIFFS to engage counsel to bring this
17 action to compel compliance with the AGREEMENTS, and to recover the attorneys'
18 fees and the costs for which EMPLOYER is liable pursuant to the AGREEMENTS
19 and section 502(g)(2) of ERISA, 29 U.S.C. §1132(g)(2).

20 38. PLAINTIFFS has, concurrently with the filing of this complaint, served
21 a copy of same upon the Secretary of Labor and Secretary of the Treasury.

22
23 WHEREFORE, PLAINTIFFS pray for judgment as follows:

24 **FOR PLAINTIFFS' FIRST CLAIM FOR RELIEF FOR DAMAGES**

25 **FOR FAILURE TO PAY FRINGE BENEFIT CONTRIBUTIONS**

26 1. For unpaid contributions in the sum of \$11,064.15;
27 2. For interest and liquidated damages, as provided in the AGREEMENTS;
28 3. For audit fees in the sum of \$630.00;

4. For a statutory amount equal to the greater of the interest on unpaid contributions which were owing as of the time of the filing of the complaint herein (at the rate presceibed by law), or liquidated damages as provided in the AGREEMENTS, in the amount to be determined.

**FOR PLAINTIFFS' SECOND CLAIM FOR RELIEF FOR
SPECIFIC PERFORMANCE FOR SPECIFIC MISSING REPORTS**

1. That EMPLOYER be compelled to forthwith submit the REPORTS for the following months along with the appropriate contributions: August 2015 and September 2015.

**FOR PLAINTIFFS' THIRD CLAIM FOR RELIEF FOR
SPECIFIC PERFORMANCE TO CONDUCT AN AUDIT**

1. That EMPLOYER be compelled to forthwith submit to completion of an audit of EMPLOYER's business records covering the period from July 31, 2015 through the present, by the PLANS' auditors at the premises of EMPLOYER during business hours, at a reasonable time or times, and to allow the auditors to examine and copy the following books, records, papers, documents and reports of EMPLOYER: all job cost records, general check register and check stubs, bank statements and canceled checks, general ledgers, worker compensation insurance reports, financial statements, cash disbursements ledgers, corporate income tax returns, employee time cards, payroll journals, individual earnings records of all employees, forms W-2, 1099 and 1096 remitted to the U.S. Government, quarterly state tax returns, health and welfare and pension report for all other trades, cash receipts' journal, copies of all contracts, and all material invoices;

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AS TO ALL OF PLAINTIFFS' CLAIMS FOR RELIEF

1. For reasonable attorneys' fees;
2. For audit costs;
3. For costs of this action;
3. For further contributions according to proof; and
4. For such other and further relief as the court deems proper.

Dated: January 22, 2019

DeCARLO & SHANLEY,
a Professional Corporation

By: 
CASEY JENSEN
Attorneys for Plaintiffs,
CARPENTERS SOUTHWEST
ADMINISTRATIVE CORPORATION
and **BOARD OF TRUSTEES FOR THE**
CARPENTERS SOUTHWEST TRUSTS